

2008

Nigohosian v. Workforce Appeals Board : Brief of Petitioner

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ROBERT H. NIGOHOSIAN,

Petitioner,

vs.

Appeal No. 20080945

WORKFORCE APPEALS BOARD,
DEPARTMENT OF WORKFORCE
SERVICES, and SALT LAKE
COMMUNITY COLLEGE

Agency Case No. 08-R-00498

Respondents,

REPLY BRIEF OF PETITIONER

**PETITION FOR REVIEW
FROM FINAL DECISION OF THE WORKFORCE APPEALS BOARD**

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ARGUMENT

POINT I: Respondents mischaracterize Petitioner's case.

The Respondents, Workforce Appeals Board and Department of Workforce Services (hereinafter sometimes "Board" or "Workforce Appeals Board") have argued that Petitioner has failed to marshal all the evidence to successfully "challenge" the finding that the Petitioner Robert Nigohosian (hereinafter sometimes "Nigohosian") "knew" that his behavior as an employee was inappropriate. (See Brief of Respondent, pp. 14-16). This argument would have validity should Nigohosian be requesting, with this appeal, a reversal of the rulings of Workforce Appeals Board on one of its factual findings. Instead, Nigohosian is requesting that the order of the Workforce Appeals Board, denying Nigohosian's motion to reopen the case so the Board could reconsider its decision in light of new evidence, be reversed and the matter be remanded for further consideration.

Nigohosian is not requesting any weighing of facts as suggested by Respondents in their brief. Nigohosian's request is purely legal.

POINT II: No one knows why the Board ruled.

In their Brief, the Respondents claim, “Because the Board had a copy of the recommendation when it denied the Request for Reconsideration, the Board effectively considered that document.” (See Brief of Respondent, p. 9). This statement assumes that we can read the minds of the Board. Reviewing the decision of the Board should never require the mind reading of the Board. This Court very clearly said as much in Adams v. Board of Review of Industrial Commission, et. al., 821 P. 2d 1 (Utah App., 1991) when it held:

An administrative agency must make findings of fact and conclusions of law that are adequately detailed so as to permit meaningful appellate review. In order for us to meaningfully review the findings of the Commission, the findings must be “sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached.” ... [T]he failure of an agency to make adequate findings of fact in material issues renders its findings “*arbitrary and capricious*” unless the evidence is “clear, uncontroverted and capable of only one conclusion.” [Citations omitted]

821 P. 2d at 4.

What Nigohosian is requesting, with this appeal, is for the Board to state its reasons, in writing, why the Board refused to reopen the record to include the employee’s Faculty Recommendation. Nigohosian has argued in his opening brief

that, legally, it is an abuse of the Board's discretion not to reopen the case to include the Faculty Recommendation as a part of the record for consideration. Therefore, the Board should have stated, in writing, whether or not that Recommendation alters the Board's conclusion that Nigohosian was not entitled to unemployment benefits.

POINT III: The Faculty Recommendation is relevant, if not conclusive.

Respondents make the point that, under Utah law, the Department of Workforce Services and the Workforce Appeals Board has the authority to determine whether or not Nigohosian is eligible for unemployment benefits. Of course, Nigohosian agrees with this assertion. However, Nigohosian believes that, under any definition of relevance, the Faculty Recommendation is relevant evidence which must be considered by the Board in making its determination as to eligibility for unemployment benefits.

Nigohosian has never argued, as alleged by Respondents, that the Faculty Recommendation is "binding" upon the Board. The Board has the authority and the responsibility to weigh all relevant evidence and come to its independent conclusions supported by the evidence. Nigohosian is merely requesting that the Board weigh all the evidence.

CONCLUSION

At this stage of the process, Nigohosian is not requesting a reversal of a finding of the Board; instead, Nigohosian is requesting that the Board reopen the record to include the Faculty Recommendation and then reconsider the Board's findings, in light of that Recommendation.

Respectfully submitted this ____ day of _____, 2009.

Joseph E. Hatch
Attorney for Petitioner

MAILING CERTIFICATE

I hereby certify that on the ____ day of _____, 2009, two true
and correct copies of the foregoing Reply Brief Of Petitioners was mailed
postage pre-paid to the following:

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